

Publications

The Duty of Competence and Trends in E-Discovery

Related Attorneys

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Rodney Holaday, a partner in the Vorys Columbus office, and Paige Kohn, an associate in the Columbus office, co-authored an article for the Winter 2016 edition of the Columbus Bar Association's *Lawyers Quarterly*. The article was titled "The Duty of Competence and Trends in E-Discovery."

The article states:

"The recent amendments to the Federal Rules of Civil Procedure and the ever-shrinking percentage of client records in paper format versus electronic data or records remind us as lawyers that electronic discovery – like it or not – has and continues to grow exponentially. It is an unavoidable part of potential and actual litigation today.

As attorneys, we owe our clients the basic duty of competence in our representation. That includes 'the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.' If a matter's complexity and specialized nature is beyond our general experience and training, we need to acquire sufficient learning or skill in the area, 'associate or consult' with others that have the requisite knowledge and skill or decline the representation. The duty of competence specifically includes understanding and being able to advise on 'the benefits and risks associated with relevant technology,' and evolves as e-discovery technologies develop and become integrated into the practice of law.

It is not just a 'best practice' to understand trends in e-discovery. If your practice overlaps with or includes any litigation, it is your ethical duty to ensure that you are informed enough to advise your client of the benefits and risks in e-discovery, to associate with someone who is, such as other counsel or e-discovery vendors, or to decline the representation."

To read the entire article, [click here](#) and navigate to page 12.

